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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Terstappen et al.

Serial No. 09/801,471

Filed: 03/08/2001

For: Labeled Cells For Use As An Internal
Functional Control In Rare
Cell Detection Assays.

Examiner: Karen A. Canella

Group Art Unit: 1643

Response to 12/02/2005
Office Action

Our File No.: IMMC 234

RESPONSE

Claim Rejection under 35 USC § 112

Claims 1-4, 6-14, 16-23, 27-31, 33-42, 46-50 and 54 are rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

#1 Response:

Applicant respectfully submits that in order to show any rejection under Section 112, second paragraph, a prima facie case of indefiniteness is established when the interpretation of the claim in light of the specifications by one of ordinary skill in the art has limitations in the claim that does not reasonably define the invention. Applicant suggests that there is not sufficient reasoning as to why the claims are unclear when read in view of the specifications for a prima facie case of indefiniteness.

Claim 47 recites an "improved" kit but fails to specify what the improvement actually comprises.

#2 Response:

Claims 47-48-49-50-54 have been cancel and claims 55-56-57-58-59 have been added to clarify the improvement.